verizon

**6 Bowdoin Square, Fl. 9**
**Boston, MA 02114**

**Alexander W. Moore**
**Associate General Counsel**
**(857) 415-5130**
**alexander.w.moore@verizon.com**

June 3, 2022

Shonda Green, Secretary
Department of Communications and Cable
1000 Washington Street, Suite 600
Boston, MA 02118-6500

Re: D.T.C. 18-3 – Investigation into Accounting Practices of Telecommunications Carriers

Dear Secretary Green:

Enclosed for filing in the above-captioned proceeding on behalf of Verizon New England Inc. are the Comments of Verizon on Proposed Requirements.

Thank you for your attention to this matter.

Sincerely,

Alexander Moore CB

Alexander W. Moore

Enclosure
cc: Service List

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

| | | |
|---|---|---|
| Investigation by the Department of Telecommunications and Cable on its own Motion into Accounting Practices and Recordkeeping of Telecommunications Carriers | ) | D.T.C. 18-3 |

**COMMENTS OF VERIZON ON PROPOSED REQUIREMENTS**

Verizon New England Inc., d/b/a Verizon Massachusetts ("Verizon MA") submits these comments in response to the Notice of Proposed Requirements and Further Request for Comments ("Notice") issued by the Department in this proceeding on May 3, 2022. Verizon MA addresses the individual proposals in the Notice below.

## I. The proposed Pole Owner Report is a reasonable means of providing the information needed to calculate attachment rates. The Department should clarify that the Report does not overturn Department precedent on the use of estimates and presumptions in the Massachusetts formula.

As the Department knows, Verizon MA supports continued use of FCC Form 43-01, Table III, either as a matter of federal law or as a state-law requirement, for the data used to calculate pole and conduit attachment rates.[1] Given the Department's preference for a separate state-law report, however, the proposed Pole Owner Report appears to be a practicable means of providing the data needed to calculate attachment rates under the Massachusetts formula.[2]

While the Report would not, on its face, change the Massachusetts formula, some passages in the Notice might be read to imply that the Report is intended to overturn multiple, longstanding Department orders adopting the use of presumptions and estimates in the formula.[3]

[1] *See* Comments of Verizon New England Inc. dated July 25, 2018 ("Verizon MA Comments"), at 3, 4.
[2] The proposed Report does not, however, include a line for rate of return.
[3] *See* Notice at 7-8, 15.

Nothing in the record of this proceeding supports, or even addresses, such wholesale, substantive change, and the Department should clarify in a final order that the Report makes no such change.

The Department began developing the Massachusetts formula thirty years ago in the *Greater Media* decision. Among other rulings in that decision, the Department adopted the use of an estimate for the amount of duct feet reserved by a pole owner for maintenance and municipal use, in the absence of data allowing a precise determination, in calculating conduit attachment rates.[4] Six years later, the Department adopted the federal rebuttable presumptions for the cost of appurtenances, usable space on a pole and the amount of space attributable to a CATV attachment in calculating pole attachment rates.[5]

There are no grounds in the record for overturning these longstanding decisions, which would also be barred by procedural considerations. As summarized in the Notice, the Department sought comment in this proceeding on whether pole owners should be required to file publically available reports with the Department for attachment rate purposes, how the Department should administer those reports and whether pole owners should be required to maintain their accounts according to the FCC's USOA rules even though the FCC no longer required it.[6] None of the notices, orders or requests issued in this proceeding sought comment on whether the Department should review its own precedents adopting presumptions and estimates as part of the Massachusetts formula.[7] Those issues therefore fall outside the scope of this proceeding.[8]

[4] *See Greater Media, Inc. v. New England Tel. & Tel. Co.*, D.P.U. 91-218, Order (April 17, 1992) at 38.
[5] *See Cablevision of Boston Co. et al. v. Boston Edison Co.*, D.P.U./D.T.E. 97-82 (April 15, 1998) at 30, 43, 44.
[6] *See* Notice, at 2-3.
[7] *See* Notice of Inquiry (June 25, 2018); Order Opening Notice of Inquiry (June 25, 2018); Further Request for Comment (October 22, 2019).
[8] *See* M.G.L. c. 30A, § 11 (requiring "sufficient notice of the issues involved to afford [the parties] reasonable opportunity to prepare and present evidence and argument.")

Not surprisingly, no party filed comments in this proceeding regarding the use of presumptions or data estimates in the Massachusetts formula, and there is no information or argument in the record even addressing the Department's precedent on these issues, much less affording grounds on which to overturn them.

The record also lacks any evidence on whether it is even possible to apply the Massachusetts formula without the use of presumptions and estimates. Nothing before the Department shows whether conduit owners have been tracking the length of ducts they have reserved for maintenance or for municipal use, or whether pole owners keep data from which to determine the amount of pole space actually used by attachments, the actual amount of usable space on each pole, or the cost of appurtenances. Attachment rates cannot be calculated under the Massachusetts formula without this data, or the use of estimates or presumptions.

Moreover, some aspects of the Massachusetts formula were adopted not because of a lack of data but as a policy matter to streamline the rate calculation process. For example, the Department found in *Greater Media* that, "the gain in simplicity from using the Form M offsets any possible benefit from the more detailed cost data that NET's COSS may offer."[9] Likewise, in *Cablevision*, the Department rejected the pole owner's data-driven proposal for determining the average amount of usable space on its poles in favor of the federal presumption of 13.5 feet "as the best alternative in order to maintain a formula that is simple and expeditious."[10] As the Department put it in the *A-R Cable* decision, the Department's intent in adopting the Massachusetts formula was:

> … to have a simple, predictable, and expeditious procedure that will allow parties to calculate pole attachment rates without the need for Department intervention.

[9] *Greater Media*, at 34.
[10] *See Cablevision,* at 43.

> … Pole attachment complaint proceedings are not meant to be costly, full blown rate cases, but rather streamlined proceedings based on publicly available data.[11]

The Massachusetts formula as currently conceived, presumptions and all, has largely met this policy goal for close to a quarter-century, in that the *A-R Cable* decision in 1998 marks the last time the Department was required to enter a decision setting pole or conduit attachment rates. Stakeholders were never asked to comment on this policy in this proceeding, and nothing in the resulting record supports abandoning it in favor of a potentially complex and time-consuming attachment rate calculation process entirely dependent on actual data which may or may not exist. The final order in this case should clarify that it does not make such a change.

On a housekeeping matter, Verizon MA requests that the filing deadline for the Pole Owner Report be moved from March 1, as proposed in the Notice, to April 1. Verizon MA files its annual return with the Department by March 31 each year, and the FCC's filing deadline for Form 43-01 for other states is April 1, so using that date for a state pole report would allow for a more efficient preparation process. Because Verizon MA has filed its Form 43-01 on April 1 each year to date, aligning the state and federal filing dates would not delay the calculation of attachment rates.

## II. The Notice properly declines to impose requirements on the accounting methods Telecommunications Pole Owners may use for the data underlying their attachment rates.

The decision not to impose requirements on the accounting methods that Telecommunications Pole Owners may use to complete the proposed Pole Owner Report, Notice at 12, is well-reasoned and amply supported in the record. As the Department found, no Massachusetts law requires a telecommunications carrier to use a particular accounting methodology in keeping its books or in maintaining the data used to calculate its attachment

[11] *A-R Cable Services, et al. v. Massachusetts Electric Company*, D.T.E. 98-52 (November 6, 1998), at 7.

rates, such as the FCC's former USOA system.[12] And reinstating the USOA rules would not result in uniformity of accounting procedures across all pole owners.[13]

The Department was also correct in finding that the FCC decision allowing use of GAAP accounting and Verizon MA's shift from USOA accounts to GAAP has not affected attachment rates. *See* Notice at 12. Some commenters speculated that shifting to GAAP accounting might cause rate shock, but the record does not include any evidence that attachment rates have soared or would necessarily soar as a result of that shift. To the contrary, Verizon MA submitted calculations demonstrating that the shift to GAAP would not increase pole attachment rates in any significant way.[14] Consequently, the theoretical possibility of rate shock does not provide any basis for reinstating the USOA strictures. And of course, the Notice makes clear the Department's intent to take appropriate action in the unlikely event that use of an accounting method actually results in rate shock or unreasonable rates in the future.[15]

## III. There is no need or basis in the record for creating new, state-level continuing property records requirements in light of the federal rules. Formulating a wholly new set of rules is beyond the scope of this proceeding.

As Verizon MA has previously stated, a state rule on continuing property records is unnecessary because federal law requires Telecommunications Pole Owners to maintain, at a minimum, "continuing property records necessary to track substantial assets and investments in an accurate, auditable manner that enables them to verify their accounting books." 47 U.S.C. §

[12] *See* Notice at 11; *see also* letter from Alexander Moore to Shonda Green dated August 24, 2018.
[13] *See* Reply Comments of Verizon New England Inc. dated August 9, 2018, at 8, pointing out that before the FCC allowed some telephone companies to use GAAP accounting, power companies and various categories of telephone companies each used different versions of USOA accounts.
[14] *See* Verizon Further Comments, at 3, 4, showing that cable and telecom pole attachments rates based on 2018 GAAP data would not be significantly higher than current rates and would be lower than rates calculated using USOA-based data for the same year.
[15] *See* Notice at 13.

32.2000(e)(8).[16] If, as indicated in the Notice, the Department is disinclined to rely on federal law alone, it could adopt the federal rule as a matter of state law. The FCC developed that language in connection with freeing price cap carriers from the USOA rules,[17] and it has proven to be effective: Verizon MA is not aware of any instance in the nine years since the requirement took effect in which the company has been unable to verify through its accounting records any of the data used to calculate attachment rates in Massachusetts.

Adding another layer of document retention requirements at the state level amounts to a solution in search of a problem. The "data shortfalls" referenced in the Notice, at 15, do not afford grounds for imposing a new layer of redundant, state-law document retention requirements on pole owners. Where the Department used an estimate or a presumption in *Greater Media* and *Cablevision* to address a lack of data, the problem was that the desired data simply did not exist – as where the pole owner had not recorded the length of ducts it had reserved for maintenance or municipal use – not because the owner had failed to retain documentation to verify the data that it did track. In neither of those decisions did the Department adopt an estimate or a presumption because it was unable to determine, due to a lack of accounting records, the veracity of the pole owner's data or the manner in which the pole owner had kept its accounts. Consequently, the "data shortfalls" do not support the notion that the federal continuing property records requirements are inadequate for Massachusetts' purposes.

Further, the long history of the Massachusetts formula evidences no desire on the part of the Department for more detailed or underlying financial records as asserted in the Notice, at 15. The discussion of reserved duct space in *Greater Media* does not mention such a desire.[18] But

[16] This regulation applies by its terms to price cap carriers like Verizon MA in all states, unlike the federal requirement to file Form 43-01, which does not apply in reverse-preemption states like Massachusetts.
[17] *See* Comments of Verizon New England Inc. dated July 25, 2018, at 8.
[18] See *Greater Media*, at 38.

even a one-off expression of such a desire would be immaterial, because in the decades since *Greater Media*, *Cablevision* and *A-R Cable,* the Department has never directed pole owners to keep their books and records in greater detail so as to eliminate the need for estimates and presumptions in the formula, for example by tracking the amount of duct dedicated to maintenance or municipal use, or to measure the actual amount of space used by CATV attachments on poles. That is consistent with the Department's goal of providing a simple and expeditious rate-calculation mechanism and is overwhelming evidence of satisfaction with the *status quo*.

In addition, the development of new, state-based continuing property records requirements is beyond the scope of this proceeding. The Order Opening Notice of Inquiry asked whether the Department should require carriers to maintain continuing property records in accord with the FCC's former rules or whether the FCC's new formulation for price cap carriers was sufficient.[19] Commenters responded to that question, but the Department never sought and never received comment on whether it should craft wholly new requirements or what such requirements should be.

Finally, the continuing property records requirements proposed in the Notice go too far and could be read to require retention of documents well beyond what would be needed to audit a pole owners books, verify its data or understand how it had allocated its costs, imposing needless costs on pole owners. In particular, the proposed requirement to retain not only guidelines, system documentation and spreadsheets used to calculate data in the Pole Owner Report but also "training materials," "electronic copies of relevant systems" and "software"[20] are overkill and extremely broad. "Relevant systems" and "software" for example, might be read to

[19] *See* Order Opening Notice of Inquiry (June 25, 2018), at 3.
[20] *See* Notice at 16.

require a pole owner to retain full copies of any accounting software it might retire in the future, even though it retains other records sufficient for an audit and showing how it allocated its costs.

In sum, there is no need for new, state-level continuing property records requirements in light of the federal rule. The few "data shortfalls" referenced in the Notice were not the result of the failure of pole owners to retain continuing property records, and in any event the Department addressed those shortfalls with an estimate and presumptions that have worked well over many years, in keeping with the Department's policy favoring a simple and expeditious process to calculate attachment rates. If the Department nevertheless prefers a state-based rule, the better course of action would be to adopt the current federal rule rather than attempt to formulate a wholly new set of rules on this issue, on this record.

## IV. Conclusion

For the above reasons, the Department should affirm in a final order its decision not to impose requirements on the accounting methods used by Telecommunications Pole Owners, should clarify that the new Pole Owner Report does not overturn past Department rulings on use of estimates or presumptions in calculating attachment rates, and should rely on or, at most, adopt the federal formulation of the continuing property records requirement.

Respectfully submitted,

VERIZON NEW ENGLAND INC.,

By its attorney

Alexander Moore CB

Alexander W. Moore
6 Bowdoin Square, 9th Floor
Boston, MA 02114
(857) 415-5130

Dated: June 3, 2022